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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RENE GUADALUPE TREVINO,
12 Petitioner,

13 vs.
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16 MATTHEW CATE, SECRETARY, et al.,
17 Respondent.
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CASE NO. 11-CV-01706-H (PCL)

ORDER:

**(1) DENYING PETITIONER'S
REQUEST FOR CERTIFICATE
OF APPEALABILITY;**

**(2) DENYING REQUEST FOR
APPOINTMENT OF COUNSEL
ON APPEAL; and**

**(3) GRANTING REQUEST TO
PROCEED IN FORMA
PAUPERIS ON APPEAL**

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20 On July 29, 2011, Petitioner Rene Guadalupe Trevino, a state prisoner proceeding pro
21 se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a parole
22 denial by the California Board of Parole Hearings. (Doc. No. 1.) On January 17, 2012, the
23 Court issued an order denying the petition and adopting the magistrate judge's report and
24 recommendation. (Doc. No. 9.) On February 13, 2012, Petitioner filed requests for a
25 certificate of appealability, to proceed in forma pauperis on appeal, and for appointment of
26 counsel. (Doc. No. 11.)
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1 **I. Certificate of Appealability**

2 According to the Federal Rules of Appellate Procedure, a petitioner may not seek an
 3 appeal of a claim arising out of state court detention unless the petitioner obtains a certificate
 4 of appealability from either the district judge or a circuit judge under 28 U.S.C. § 2253. See
 5 Fed. R. App. P. 22(b). Section 2253 states that a certificate of appealability may only issue if
 6 the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C.
 7 § 2253(c)(1). Where, as here, the Court has rejected the petitioner’s constitutional claims on
 8 the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the district
 9 court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529
 10 U.S. 473, 483-84 (2000).

11 The Court concludes that Petitioner has failed to demonstrate that reasonable jurists
 12 would find the Court’s assessment debatable or wrong. The Court **DENIES** Petitioner’s
 13 motion for a certificate of appealability.

14 **II. Appointment of Counsel**

15 Petitioner also requests counsel be appointed to represent him on appeal. There is no
 16 absolute right to appointment of counsel in habeas proceedings. Nevius v. Sumner, 105 F.3d
 17 453, 460 (9th Cir. 1996); Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). However,
 18 18 U.S.C. § 3006A(g) authorizes courts to appoint counsel in habeas proceedings if “the court
 19 determines that the interests of justice so require.” Chaney v. Lewis, 801 F.2d 1191, 1196 (9th
 20 Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984).
 21 “In deciding whether to appoint counsel in a habeas proceeding, the district court must
 22 evaluate the likelihood of success on the merits as well as the ability of the petitioner to
 23 articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt
 24 v. Look, 718 F.2d 952, 954 (9th Cir. 1983) (per curiam).


25 The Court has already denied the petition on the merits and determines that the interests
 26 of justice do not require appointment of counsel. The Court therefore **DENIES** the request for
 27 appointment of counsel on appeal.

1 **III. In Forma Pauperis**

2 Petitioner also requests to proceed in forma pauperis on appeal and has attached a
3 declaration of his indigence to his notice of appeal. (Doc. No. 11.) The Court **GRANTS**
4 Petitioner's request to proceed in forma pauperis on appeal. 28 U.S.C. § 1915(a).

5 **IT IS SO ORDERED.**

6 DATED: February 23, 2012

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8 MARILYN L. HUFF, District Judge
9 UNITED STATES DISTRICT COURT
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